DAIMLERCHRYSLER

DaimlerChrysler Corporation
Office of the General Counsel

October 30, 2001

VIA OVERNIGHT MAIL

Regional Hearing Clerk (R-19J)
U. S. Environmental Protection Agency-Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: In The Matter of DaimlerChrysler Corporation
Docket No. RCRA-05-2001-0015
Our File No.: 2700-527

Dear Clerk:

Enclosed for filing in the above-captioned proceeding please find the original and two (2) copies of the following documents:

1. *Entry of Appearance of Respondent and Attorney and Designation for Purposes of Service;* and
2. *Answer and Request for Hearing.*

Upon receipt and filing, please return a file-stamped copy to me at the address shown on the *Entry of Appearance of Respondent and Attorney and Designation for Purposes of Service* in the enclosed self-addressed, stamped envelope.

If you have any questions concerning the enclosed documents or regarding the above-captioned proceeding, please do not hesitate to contact the undersigned at (248) 512-4116. I appreciate your cooperation and assistance with this matter.

Very truly yours,

Kathleen M. Hennessey

Kathleen M. Hennessey

Enclosures

cc w/ enc: Karen L. Peaceman, Esq., Associate Regional Counsel (C-14J)

DaimlerChrysler Corporation
1000 Chrysler Drive CIMS 485-13-62
Auburn Hills MI USA 48326-2766

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
DaimlerChrysler Corporation	)	DOCKET NO. RCRA 05 2001-0015
Toledo Assembly Plant #1	)	
1000 Jeep Parkway	)	
Toledo, Ohio 43657	)	
U.S. EPA ID # OHD 048 784 862	)	
	)	
Respondent.	)	
	)	

ENTRY OF APPEARANCE OF RESPONDENT AND ATTORNEY AND DESIGNATION FOR PURPOSE OF SERVICE

The undersigned, Kathleen M. Hennessey, hereby enters the appearance of DaimlerChrysler Corporation, a Delaware corporation, as the Respondent in this proceeding, and Howard & Howard Attorneys, P.C. as attorneys for Respondent therein.

Pursuant to 40 *Code of Federal Regulations* §22.5(c)(4), the Respondent designates its attorneys of record in this proceeding for service of all documents, filings and other related matters. Service should be provided to:

Jon S. Faletto
Steven C. Kohl
Howard & Howard Attorneys
One Technology Plaza, Suite 600
211 Fulton Street
Peoria, IL 61602
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Respectfully submitted,

Kathleen M. Hennessey

Kathleen M. Hennessey
Senior Staff Counsel
Office of General Counsel
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1000 Chrysler Drive, CIMS 485-13-62
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Jon S. Faletto
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have served on this 30th day of October, 2001, the attached Entry of Appearance of Respondent and Attorney and Designation for Purposes of Service, by arranging for personal delivery via a reliable commercial delivery service upon the following parties:

Regional Hearing Clerk (R-19J)
U. S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Ms. Karen L. Peaceman
Assistant Regional Counsel
Office of Regional Counsel (C-14J)
U. S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Kathleen M. Hennessey
Senior Staff Counsel
Office of General Counsel
DaimlerChrysler Corporation
1000 Chrysler Drive, CIMS 485-13-62
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10/29/01

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
DaimlerChrysler Corporation	)	DOCKET NO. RCRA-05-2001-0015
Toledo Assembly Plant #1	)	
1000 Jeep Parkway	)	
Toledo, Ohio 43657	)	
U.S. EPA ID # OHD 048 784 862	)	
	)	
Respondent	)	
	)	

ANSWER AND REQUEST FOR HEARING

NOW COMES the Respondent, DaimlerChrysler Corporation, a Delaware corporation, by and through its attorneys, and for its Answer and Request for Hearing, responds to the Complainant's Administrative Complaint as follows:

REQUEST FOR HEARING

Pursuant to 40 *Code of Federal Regulations* §22.15(c), Respondent respectfully requests a hearing upon the issues raised by the Administrative Complaint and Respondent's Answer thereto.

DEFENSES

1. **Lack of Statutory Authority**. Pursuant to Section 3006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6926, the State of Ohio has received final authorization to administer a program for the regulation of hazardous waste that operates in lieu of the federal program and federal regulations promulgated to implement the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, et seq. Authorization of Ohio's hazardous waste program, state

statutes and implementing state administrative regulations pursuant to Section 3006 of the Act divests the Complainant of any legal authority to initiate or maintain the instant enforcement action for alleged violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, et seq., or the implementing federal regulations.

2. **Lack of Statutory Jurisdiction**. Authorization of Ohio's hazardous waste program, state statutes and implementing state administrative regulations pursuant to Section 3006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6926, divests the Complainant of jurisdiction to initiate or maintain the instant enforcement action and renders inapplicable the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* set forth at Title 40 *Code of Federal Regulations*, Part 22.

3. **Lack of Subject Matter Jurisdiction**. The allegations stated in the Complaint and obligations of the Compliance Order are premised solely on Complainant's legal conclusion that Respondent's "solvent recovery system" is used to convey, store or otherwise manage a "hazardous waste." Because hazardous waste is not managed in the subject "solvent recovery system," Sections 3006 and 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6926 and 6928, do not provide the requisite subject matter jurisdiction to initiate or maintain the instant enforcement action.

4. **Violation of Due Process**. The allegations stated in the Complaint are premised on the Complainant's legal conclusions and interpretations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901 et seq., and the implementing federal regulations. Complainant has not provided "fair notice" of its legal conclusions or its regulatory interpretations, nor has it provided a clear standard of what conduct is prohibited or required by the relevant regulations as

interpreted and/or enforced by the Complainant. Because Respondent was not given "fair notice" of the Complainant's legal conclusions and regulatory interpretations, asserted in the Complaint and Compliance Order, as required under constitutionally-based principles of due process, Respondent is not liable nor subject to civil penalties under the Solid Waste Disposal Act, 42 U.S.C. §§6901, et seq.

5. **Failure to Undertake Required Rulemaking**. Pursuant to Section 3002 of the Solid Waste Disposal Act, as amended (42 U.S.C. §6922), the Administrator of the U. S. Environmental Protection Agency is given the authority to promulgate standards applicable to generators of hazardous waste, after notice and opportunity for public hearing and after consultation with appropriate Federal and State agencies. The instant enforcement action is based on written policy/guidance documents and interpretive letters which create a new "standard" applicable to generators of hazardous waste and those written policy/guidance documents and interpretative letters were not duly promulgated in compliance with the procedures prescribed in the Solid Waste Disposal Act, as amended (42 U.S.C. §§6901, et seq.), or in the Administrative Procedure Act (5 U.S.C. §§551, et seq). The Complainant is prohibited from initiating or maintaining the instant enforcement action because it is based on written policy/guidance or interpretive letters that were not properly promulgated through notice and comment rulemaking in accordance with the Solid Waste Disposal Act, as amended (42 U.S.C. §§6901, et seq), or the Administrative Procedure Act (5 U.S.C. §§551, et seq.).

6. **Statute of Limitations**. The allegations stated in the Complaint are based in part on the federal regulation found at 40 C.F.R. Part 265, Subpart BB (§§265.1050 through 265.1064) which were promulgated on June 21, 1990 (55 *Fed. Reg.* 25512), and the federal regulations found at 40 C.F.R. Part 265, Subpart CC (§§265.1080 through 265.1090) which were

promulgated on December 4, 1994 (59 *Fed. Reg.* 62935). To the extent the allegations stated in the Complaint are based on violations of the federal Subpart BB and/or Subpart CC regulations, the instant enforcement action seeking to impose liability for those alleged violations is barred by the five-year general federal statute of limitations for civil enforcement actions set forth at 28 U.S.C. §2462.

ANSWER TO COMPLAINT

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. §6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). This action is also instituted pursuant to Sections 22.1(a)(4), 22.13 and 22.37 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules"), 40 C.F.R. Part 22.

ANSWER: The allegations stated in Paragraph 1 are conclusions of law to which no answer is required nor tendered. To the extent that a response may be required, the allegations are denied.

2. Jurisdiction for this action is conferred upon USEPA by Sections 3006(b), and 3008 of RCRA; 42 U.S.C. §§6926(b) and 6928.

ANSWER: The allegations stated in Paragraph 2 are conclusions of law to which no answer is required nor tendered. Respondent denies that jurisdiction for this action is conferred upon Complainant by any provision of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, *et seq.*, or that Complainant has authority to enforce the Solid

Waste Disposal Act as amended, 42 U.S.C. §§6901, *et seq.*, or the implementing federal regulations in the state of Ohio.

3. The Complainant is, by lawful delegation, the Chief, Enforcement and Compliance Assurance Branch ("ECAB"), Waste, Pesticides and Toxics Division, Region 5, United States Environmental Protection Agency ("USEPA").

ANSWER: Respondent does not have knowledge sufficient to admit or deny the allegations stated in Paragraph 3.

4. USEPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.

ANSWER: Respondent admits only that the United States Environmental Protection Agency ("USEPA") has promulgated federal regulations that are set forth in Title 40 of the Code of Federal Regulations. The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 4 are not consistent with those provisions, said allegations are denied.

5. Pursuant to Section 3006 of RCRA, 42 U.S.C. §6926, the Administrator of USEPA may authorize a State to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the State program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. §6928.

ANSWER: The provisions of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, *et seq.,* referred to by Complainant as "RCRA," speak for themselves and to the extent that the allegations stated in Paragraph 5 are not consistent with those provisions, said allegations are denied.

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b), the Administrator of USEPA granted the State of Ohio final authorization to administer a State hazardous waste program in lieu of the federal government's RCRA program effective June 30, 1989. 44 Fed. Reg. 27170 (June 28, 1989). The USEPA granted Ohio final authorization to administer certain HSWA and additional RCRA requirements effective June 7, 1991, 56 Fed. Reg. 14203 (April 8, 1991) [corrected effective August 19, 1991 (56 Fed. Reg. 28088 (June 19, 1991)]; September 25, 1995, 60 Fed. Reg. 38502 (July 27, 1995); and December 23, 1996, 61 Fed. Reg. 54950 (October 23, 1996). The USEPA authorized Ohio regulations are codified at Ohio Administrative Code ("OAC") Chapters 3745-49 through 69. See also 40 C.F.R. §272.1800 ***et seq.***

ANSWER: Respondent admits the allegations stated in Paragraph 6.

7. USEPA has provided notice of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2).

ANSWER: Respondent does not have knowledge sufficient to admit or deny the allegations stated in Paragraph 7.

General Allegations

8. The Respondent is DaimlerChrysler Corporation, which is and was at all times relevant to this Complaint a corporation incorporated under the laws of Delaware, and the owner and operator of a facility as defined by OAC 3745-50-10(78) and (79) and 40 C.F.R. §260.10, located at 1000 Jeep Parkway, Toledo, Ohio 43657 (the "facility").

ANSWER: Respondent admits only that it is and was a Delaware corporation at all times relevant to the Complaint and the allegations stated in Paragraph 8 that reference the Ohio administrative regulation. Respondent denies the remaining allegation stated in Paragraph 8.

9. Respondent is a "person" as defined by OAC 3745-50-10(83), Section 1004(15) of RCRA, 42 U.S.C. §6903(15), and 40 C.F.R. §260.10.

ANSWER: Respondent admits only the allegations stated in Paragraph 9 that reference the Ohio administrative regulation. Respondent denies the remaining allegations stated in Paragraph 9.

10. At all times relevant to this Complaint, Respondent generated wastes at the facility which were solid wastes, as defined in OAC 3745-51-02 and 40 C.F.R. §261.2.

ANSWER: Respondent admits only the allegations stated in Paragraph 10 that reference the Ohio administrative regulation. Respondent denies the remaining allegations stated in Paragraph 10.

11. Chrysler Corporation, the former owner or operator of the facility, submitted to USEPA a Hazardous Waste Notification pursuant to Section 3010 of RCRA, 42 U.S.C. §6930, identifying the facility as a generator of hazardous waste on or before August 18, 1980. In 1998, DaimlerChrysler became the successor corporation and it subsequently submitted to Ohio EPA a

Hazardous Waste Notification indicating a change of ownership of this facility on February 16, 1999.

ANSWER: Respondent admits the allegations stated in Paragraph 11.

12. As a result of its painting operations, Respondent accumulates hazardous waste in a tank system at the facility. Respondent uses purge solvent to remove paint waste and clean paint applicators to allow the use of new colors in its painting operations. The used paint-bearing purge solvent is a spent material because Respondent physically removes the paint from the paint applicators and does not use the paint-bearing purge solvent to clean the paint applicators a second time. The used paint-bearing solvent has a high total organic concentration and is ignitable; the used spent paint-bearing purge solvent is a characteristic hazardous waste.

ANSWER: Respondent admits only that it utilizes a purge solvent product in its manufacturing process and after all appropriate uses for purge solvent have been completed, Respondent arranges for transportation to an off-site facility for reclamation in accordance with applicable requirements. Respondent denies the remaining allegations stated in Paragraph 12.

13. The waste (the used paint-bearing purge solvent) removed from the paint applicators is conveyed through the "solvent recovery system" to the hazardous waste tanks; the only purpose served by Respondent's solvent recovery system is to manage, *i.e.*, convey the hazardous waste (the used paint-bearing purge solvent). As Respondent's solvent recovery system serves solely to manage the waste generated from the cleaning of the paint applicators and a portion of the delivery line, it is not part of the production process. Thus, all the equipment associated with the solvent recovery system (*e.g.*, purge pot(s), mix tanks, piping, pumps, valves,

connectors) and the hazardous waste storage tanks, are subject to the hazardous waste requirements of RCRA.

ANSWER: Respondent admits only that purge solvent product is continually used in the production process for its solvent properties throughout tanks, piping, pumps, valves, connectors and other manufacturing process equipment. Respondent denies the remaining allegations stated in Paragraph 13.

14. Under Section 3005(a) of RCRA, 42 U.S.C. §6925(a), the regulations at 40 C.F.R. Part 270, Ohio Revised Code Chapter 3734.02(E)(2) and OAC 3745-50-45, the treatment, storage, or disposal of hazardous waste by any person who has not applied for, or received a permit, or interim status, is prohibited.

ANSWER: The provisions of the Ohio Revised Code and the Ohio Administrative Code speak for themselves and to the extent that the allegations stated in Paragraph 14 are not consistent with those provisions, said allegations are denied.

15. Neither USEPA nor the State of Ohio have issued a permit to Respondent to treat, store, or dispose of hazardous wastes.

ANSWER: Respondent admits the allegations stated in Paragraph 15.

16. Respondent does not have interim status for the treatment, storage, or disposal of hazardous wastes.

ANSWER: Respondent admits the allegations stated in Paragraph 16.

17. Pursuant to OAC 3745-50-45(C)(1) generators who accumulate hazardous waste on-site and who comply with the provisions in rule 3745-52-34 of the Ohio Administrative Code are not required to obtain a hazardous waste permit.

ANSWER: The provisions of the Ohio Administrative Code speak for themselves and to the extent that the allegations of Paragraph 17 are not consistent with those provisions, said allegations are denied.

18. Under OAC 3745-52-34 and 40 C.F.R. §262.34, generators of hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or having interim status, provided that the generator complies with the applicable provisions of OAC 3745-52-34 and 40 C.F.R. §262.34.

ANSWER: The provisions of the Ohio Administrative Code and of the Code of Federal Regulations speak for themselves and to the extent that the allegations of Paragraph 18 are not consistent with those provisions, said allegations are denied.

19. Effective December 6, 1996, generators could accumulate hazardous waste on-site for 90 days or less without a permit and without having interim status provided that, among other things, the waste was placed in tanks and the generator complied with the applicable provisions of OAC 3745-66-90 to 3745-66-96 and 40 C.F.R. §262.34, including and 40 C.F.R. Part 265, Subparts J (§§265.190-265.202), BB (§§265.1050-265.1064) and CC (§§265.1080-265.1091).

ANSWER: The provisions of the Ohio Administrative Code and of the Code of Federal Regulations speak for themselves and to the extent that the allegations of Paragraph 19 are not consistent with those provisions, said allegations are denied.

20. Prior to January 21, 1999, 40 C.F.R. §262.34(a)(1)(ii) a generator could accumulate hazardous waste on-site for 90 days or less without a permit and without having interim status provided that, among other things, the waste was placed in tanks and the generator complied with OAC 3745-66-90 to 3745-66-96 and Subpart J (§§265.190-265.202). Pursuant to

40 C.F.R. §265.202, the owner or operator shall manage all hazardous waste placed in a tank in accordance with, among other things, the applicable requirements of 40 C.F.R. Part 265, Subpart BB (§§265.1050-265.1064) and Subpart CC (§§265.1080-265.1091).

ANSWER: The provisions of the Ohio Administrative Code and of the Code of Federal Regulations speak for themselves and to the extent that the allegations of Paragraph 20 are not consistent with those provisions, said allegations are denied.

21. On January 21, 1999, USEPA amended 40 C.F.R. §262.34 so that the requirement that a generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subpart BB (§§265.1050-1064) and CC (§§265.1080-1090) if it is to be exempt from the permit requirements is now found directly in 40 C.F.R. §262.34(a)(1)(ii).

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations of Paragraph 21 are not consistent with those provisions, said allegations are denied.

22. USEPA has not authorized the State of Ohio, under RCRA Section 3006(g), to administer its hazardous waste regulations in lieu of the Federal regulations for all exemptions of 40 C.F.R. §262.34(a)(1)(ii), including those exemptions which require compliance with the applicable requirements of 40 C.F.R. Part 265, Subpart BB and CC.

ANSWER: Respondent does not have knowledge sufficient to admit or deny the allegations stated in Paragraph 22.

23. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. §6926(g), USEPA has jurisdiction to carry out directly those portions of the HSWA requirements for which a State is not authorized. Thus, USEPA has jurisdiction to administer directly in Ohio, those portions of

40 C.F.R. §262.34(a)(1)(ii) for which the State of Ohio has not been authorized including the HSWA requirements of 40 C.F.R. Part 265 Subparts BB and CC.

ANSWER: The allegations stated in Paragraph 23 are conclusions of law to which no answer is required nor tendered. To the extent that a response may be required, the allegations are denied. The provisions of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, *et seq.*, speak for themselves and to the extent that the allegations of Paragraph 23 are not consistent with those provisions, said allegations are denied.

24. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. §6926(g), requirements imposed pursuant to HSWA take effect immediately in all States.

ANSWER: The allegations stated in Paragraph 24 are conclusions of law to which no answer is required nor tendered. To the extent that a response may be required, the allegations are denied. The provisions of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, *et seq.*, speak for themselves and to the extent that the allegations of Paragraph 23 are not consistent with those provisions, said allegations are denied.

25. Any installation storing hazardous waste without a permit or interim status that fails to fully comply with the applicable provisions of OAC 3745-52-34 and 40 C.F.R. 262.34 is storing hazardous waste in violation of Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and Chapter 3734.02(E)(2) of the Ohio Revised Code.

ANSWER: The allegations stated in Paragraph 24 are conclusions of law to which no answer is required nor tendered. To the extent that a response may be required, the allegations are denied. The provisions of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, *et seq.*, speak for themselves and to the extent that the allegations of Paragraph 23 are not consistent with those provisions, said allegations are denied.

26. On April 5, 2001, USEPA conducted RCRA compliance evaluation inspection and records review at the facility.

ANSWER: Respondent admits only that on April 5, 2001, USEPA officials were present at Respondent's facility located at 1000 Jeep Parkway, Toledo, Ohio. Respondent does not have knowledge sufficient to admit or deny the remaining allegations stated in Paragraph 26.

COUNT 1
STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT OR INTERIM STATUS BY FAILING TO MEET THE DESIGN AND INSTALLATION REQUIREMENTS FOR A NEW TANK SYSTEM OR FAILING TO MEET THE SECONDARY CONTAINMENT REQUIREMENTS FOR GENERATORS STORING HAZARDOUS WASTE IN A TANK SYSTEM

27. Complaint incorporates paragraph 1 through 26 of this Complaint as though set forth in this paragraph.

ANSWER: Respondent repeats and incorporates herein its responses to the allegations stated in Paragraphs 1 through 26 of the Complaint.

28. Pursuant to OAC 3745-52-34, a generator may, without a permit or interim status, accumulate hazardous waste for 90 days or less provided the generator, among other things, complied with OAC 3745-66-90 through 3745-66-96.

ANSWER: Respondent denies that the allegations listed in Paragraph 28 constitute an accurate statement of OAC 3745-52-34. The provisions of the Ohio Administrative Code speak for themselves and to the extent that the allegations of Paragraph 28 are not consistent with those provisions, said allegations are denied.

29. Pursuant to OAC 3745-66-92(A) owners or operators of new tank systems and components must obtain a written assessment reviewed and certified by an independent,

qualified, registered professional engineer in accordance with OAC 3745-50-42(D) attesting that the system has sufficient structural integrity and is acceptable for the storing of hazardous waste.

ANSWER: Respondent denies that the allegations listed in Paragraph 29 constitute an accurate statement of OAC 3745-66-92(A). The provisions of the Ohio Administrative Code speak for themselves and to the extent that the allegations of Paragraph 29 are not consistent with those provisions, said allegations are denied.

30. Pursuant to OAC 3745-50-10(A)(71) "new tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for the purposes of paragraph (G)(2) of rule 3745-55-93 and paragraph (G)(2) of rule 3745-66-93 of the Administrative Code, a new tank system is one for which construction commenced after July 14, 1986.

ANSWER: Respondent denies that the allegations listed in Paragraph 30 constitute an accurate statement of OAC 3745-50-10(A)(71). The provisions of the Ohio Administrative Code speak for themselves and to the extent that the allegations of Paragraph 30 are not consistent with those provisions, said allegations are denied.

31. Respondent installed and/or commenced construction of a new tank system and new tank components after July 14, 1986. The new tank system includes: two 3,000 gallon hazardous waste storage tanks, and ancillary equipment which includes: two re-circulation loops; two solvent recovery day tanks; two lift stations; and a discharge line which leads to a pump out box.

ANSWER: Respondent denies the allegations stated in Paragraph 31.

32. At the time of the inspection, Respondent could not produce a written assessment of that new tank system that had been reviewed and certified by an independent, qualified, registered professional engineer.

ANSWER: Respondent denies the allegations stated in Paragraph 32.

33. Respondent's failure to have a written assessment reviewed and certified by an independent, qualified, registered professional engineer constitutes a violation of OAC 3745-66-92(A).

ANSWER: Respondent denies the allegations stated in Paragraph 33.

34. Pursuant to OAC 3745-66-92(D) all new tanks and ancillary equipment must be tested for tightness prior to being covered or placed in use.

ANSWER: Respondent denies that the allegations listed in Paragraph 34 constitute an accurate statement of OAC 3745-66-92(D). The provisions of the Ohio Administrative Code speak for themselves and to the extent that the allegations of Paragraph 34 are not consistent with those provisions, said allegations are denied.

35. At the time of the inspection, Respondent could not demonstrate that a tightness test had been conducted prior to the new tank system being used.

ANSWER: Respondent denies the allegations stated in Paragraph 35.

36. Respondent's failure to have a conducted the tightness test prior to using the tank system constitutes a violation of OAC 3745-66-92(D).

ANSWER: Respondent denies the allegations stated in Paragraph 36.

37. Respondent did not meet the requirements of OAC 3745-66-92; therefore Respondent did not satisfy the conditions of OAC 3745-52-34 necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous

waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and Chapter 3745.02(E)(2) of the Ohio Revised Code.

ANSWER: Respondent denies the allegations stated in Paragraph 37.

38. Pursuant to OAC 3745-66-93(A)(1), an owner or operator must provide secondary containment that meets the requirements of OAC 3745-66-93(B) for all new tank systems, prior to their being put into service.

ANSWER: Respondent denies that the allegations stated in Paragraph 38 constitute an accurate statement of OAC 3745-66-93(A)(1). The provisions of the Ohio Administrative Code speak for themselves and to the extent that the allegations of Paragraph 38 are not consistent with those provisions, said allegations are denied.

39. Pursuant to OAC 3745-66-93(B), secondary containment must be designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system at any time during the use of the tank system; and capable of collecting releases and accumulating liquids until the collected material can be removed.

ANSWER: Respondent denies that the allegations stated in Paragraph 39 constitute an accurate statement of OAC 3745-66-93(B). The provisions of the Ohio Administrative Code speak for themselves and to the extent that the allegations of Paragraph 39 are not consistent with those provisions, said allegations are denied.

40. OAC 3745-66-93(C) provides that to meet the requirements of OAC 3745-66-93(B), secondary containment must be at a minimum: constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient thickness to prevent failure due to physical contact with the waste to which they are exposed, and

the stress of daily operation, including the stress from nearby vehicular traffic; sloped or otherwise designed or operated to drain and remove all liquids resulting from leaks or spills.

ANSWER: Respondent denies that the allegations stated in Paragraph 40 constitute an accurate statement of OAC 3745-66-93(C). The provisions of the Ohio Administrative Code speak for themselves and to the extent that the allegations of Paragraph 40 are not consistent with those provisions, said allegations are denied.

41. Pursuant to OAC 3745-66-93(F) ancillary equipment must be provided with full secondary containment that meets the requirements of OAC 3745-66-93(B) and (C) except for the following pieces of equipment that are visually inspected for leaks on a daily basis: above ground piping (exclusive of flanges, joints, valves, and connections); welded flanges, welded joints, and welded connections; sealess or magnetic coupling pumps and sealess valves; and pressurized above ground pipe systems with automatic shut-off devices.

ANSWER: Respondent denies that the allegations stated in Paragraph 41 constitute an accurate statement of OAC 3745-66-93(F). The provisions of the Ohio Administrative Code speak for themselves and to the extent that the allegations of Paragraph 41 are not consistent with those provisions, said allegations are denied.

42. Respondent failed to have a secondary containment system in place for the ancillary equipment prior to putting the new tank system in place which constitutes a violation of OAC 3745-66-93(F).

ANSWER: Respondent denies the allegations stated in Paragraph 42.

43. At the time of the inspection, Respondent could not demonstrate that it had designed, installed, or operated a secondary containment system for the ancillary equipment which would prevent any migration of accumulated liquid out of the system and would be

capable of collecting releases and accumulating liquids until the collected material can be removed.

ANSWER: Respondent denies the allegations stated in Paragraph 43.

44. At the time of the inspection, Respondent could not demonstrate that it had designed, installed, or operated a secondary containment system below the ancillary equipment that was lined with materials that are compatible with the waste, nor of sufficient thickness to prevent failure due to physical contact with the water or the stress of operating daily.

ANSWER: Respondent denies the allegations stated in Paragraph 44.

45. Respondent's failure to design a secondary containment system to prevent the migration of any accumulated liquid out of the tank system while it was in use constitutes a violation of OAC 3745-66-93(B).

ANSWER: Respondent denies the allegations stated in Paragraph 45.

46. Respondent's failure to construct, or line a secondary containment for the tank system with materials that are compatible with the wastes it generates constitutes a violation of OAC 3745-66-93(C).

ANSWER: Respondent denies the allegations stated in Paragraph 46.

47. Respondent did not meet the requirements of OAC 3745-66-92 and OAC 3745-66-93; therefore Respondent did not satisfy the conditions of OAC 3745-52-34 necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. §6925(a) and Chapter 3734.02(E)(2) of the Ohio Revised Code.

ANSWER: Respondent denies the allegations stated in Paragraph 48.

COUNT 2
STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT
BY FAILING TO MEET THE DAILY INSPECTION REQUIREMENTS
FOR GENERATORS WHO STORE HAZARDOUS WASTE IN TANKS

48. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

ANSWER: Respondent repeats and incorporates herein its responses to the allegations stated in Paragraphs 1 through 26 of the Complaint.

49. Pursuant to OAC 3745-66-95(A) the owner or operator must inspect, at least each operating day: overfill/spill control equipment; the above ground portion of the tank system; the construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures to detect releases of hazardous waste.

ANSWER: Respondent denies that the allegations stated in Paragraph 49 constitute an accurate statement of OAC 3745-66-95(A), and to the extent the allegations of Paragraph 49 are not consistent with those provisions, said allegations are denied.

50. At the time of the inspection, Respondent was not inspecting the tank system each operating day.

ANSWER: The allegations stated in Paragraph 50 fail to identify the "tank system" that is the subject of the allegation, and further answering, Respondent denies the allegations of Paragraph 50.

51. Respondent's failure to inspect the tank system each operating day constitutes a violation of OAC 3745-66-95.

ANSWER: The allegations stated in Paragraph 51 fail to identify the "tank system" that is the subject of the allegations, and further answering, Respondent denies the allegations of Paragraph 51.

52. Pursuant to OAC 3745-66-95(c) owners and operators must document in the operating record each daily inspection of overfill/spill control equipment, the above ground portions of the tank system, the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including secondary containment structures.

ANSWER: Respondent denies that the allegations stated in Paragraph 52 constitute an accurate statement of OAC 3745-66-95(C), and to the extent the allegations of Paragraph 52 are not consistent with those provisions, said allegations are denied.

53. At the time of the inspection, Respondent was not documenting in the operating record each daily inspection of the tank system components.

ANSWER: The allegations stated in Paragraph 53 fail to identify the "tank system components" that are the subject of the allegations, and further answering, Respondent denies the allegations of Paragraph 53.

54. Respondent's failure to document inspections in the operating record constitutes a violation of OAC 3745-66-95(C).

ANSWER: Respondent denies the allegations stated in Paragraph 54.

55. Respondent did not meet the requirements of OAC 3745-66-95; therefore Respondent did not satisfy the conditions of OAC 3745-52-34 necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of

Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and Chapter 3734.02(E)(2) of the Ohio Revised Code.

ANSWER: Respondent denies the allegations stated in Paragraph 55.

COUNT 3
STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT BY FAILING TO IMPLEMENT AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS BY FAILING TO MARK EQUIPMENT AS REQUIRED BY 40 C.F.R. §265.1050(c)

56. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

ANSWER: Respondent repeats and incorporates herein its responses to the allegations stated in Paragraphs 1 through 26 of the Complaint.

57. Pursuant to 40 C.F.R. §§262.34(a)(1)(ii) and 265.202, a generator of hazardous waste may accumulate hazardous waste on-site in tanks for 90 days or less without a permit provided that, among other things, the generator manages all hazardous waste placed in a tank in accordance with the applicable requirements of 40 C.F.R. Subpart BB (§§265.1050 through 265.1064).

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 57 are not consistent with those provisions, said allegations are denied.

58. Pursuant to 40 C.F.R. §265.1050(c) the owner or operator shall mark each piece of equipment to which Subpart BB applies in such a manner that it can be distinguished readily from other pieces of equipment.

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 58 are not consistent with those provisions, said allegations are denied.

59. At the time of inspection, Respondent had not marked all pieces of equipment for which Subpart BB applies; specifically Respondent had not marked the purge pots, delivery line, pumps associated with the mix tanks, the lift stations, all connectors contained within the delivery lines, and any valves up until the waste enters the storage tanks.

ANSWER: Respondent denies the allegations stated in Paragraph 59.

60. Respondent's failure to mark equipment that is subject to Subpart BB constitutes a violation of 40 C.F.R. §265.1050(c).

ANSWER: Respondent denies the allegations stated in Paragraph 60.

61. Respondent did not meet the requirements of 40 C.F.R. Part 265, Subpart BB; therefore Respondent did not satisfy the conditions of 40 C.F.R. §262.34(a)(1)(ii) necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and the regulations found at 40 C.F.R. §270.1(c).

ANSWER: Respondent denies the allegations stated in Paragraph 61.

COUNT 4
STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT BY FAILING TO IMPLEMENT AIR EMISSIONS STANDARDS FOR EQUIPMENT LEAKS BY FAILING TO MONITOR EQUIPMENT AS REQUIRED BY 40 C.F.R. §265.1052

62. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

ANSWER: Respondent repeats and incorporates herein its responses to the allegations stated in Paragraphs 1 through 26 of the Complaint.

63. 40 C.F.R. §265.1052(a)(1) requires that each pump in light liquid service be monitored monthly to detect leaks by methods specified in §265.1063(b).

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 63 are not consistent with those provisions, said allegations are denied.

64. 40 C.F.R. §265.1057(a) requires that each valve in light liquid service be monitored monthly to detect leaks by methods specified in §265.1063(b) and comply with paragraphs (b) through (e) of 40 C.F.R. §265.1057.

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 64 are not consistent with those provisions, said allegations are denied.

65. Pursuant to 40 C.F.R. §264.1031, in "light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the components in the stream is greater than 0.3 kilopascals (kPa) at 20 degrees Celsius, and the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 degrees Celsius is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 65 are not consistent with those provisions, said allegations are denied.

66. The two 3,000 gallon storage tanks, the two re-circulation loops, the two solvent recovery day tanks, the two lift stations, and the discharge line which leads to the pump out box contain purge solvent containing 20-50% xylene waste with a vapor pressure in excess of 0.3 kPa.

ANSWER: Respondent denies the allegations stated in Paragraph 66.

67. From July 2000 until the time of the inspection, April 5, 2001, Respondent had not monitored all pumps and valves associated with the two 3,000 gallon storage tanks, the two re-circulation loops, the two solvent recovery day tanks, the two lift stations, and the discharge line which leads to the pump out box.

ANSWER: Respondent denies the allegations stated in Paragraph 67.

68. Respondent's failure to monitor pumps on a monthly basis constitutes a violation of 40 C.F.R. §265.1052(a)(1).

ANSWER: Respondent denies the allegations stated in Paragraph 68.

69. Pursuant to 40 C.F.R. §265.1052(c)(4) each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 69 are not consistent with those provisions, said allegations are denied.

70. From July 2000 until the time of the inspection, Respondent had not conducted visual inspection of each pump on a weekly basis.

ANSWER: Respondent denies the allegations stated in Paragraph 70.

71. Respondent's failure to conduct visual weekly inspections of each pump constitutes a violation of 40 C.F.R. §265.1052(c)(4).

ANSWER: Respondent denies the allegations stated in Paragraph 71.

72. Pursuant to 40 C.F.R. §265.1057(a) each valve in light liquid service shall be monitored monthly to detect leaks.

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 72 are not consistent with those provisions, said allegations are denied.

73. At the time of the inspection, Respondent did not have a monitoring program in place for valves associated with the waste delivery system.

ANSWER: Respondent denies the allegations stated in Paragraph 73.

74. Respondent's failure to monitor each valve located with the waste delivery system at the specified frequency constitutes a violation of 40 C.F.R. §265.1057(a).

ANSWER: Respondent denies the allegations stated in Paragraph 74.

75. Respondent did not meet the requirements of 40 C.F.R. Part 265, Subpart BB; therefore Respondent did not satisfy the conditions of 40 C.F.R. §262.34(a)(1)(ii) necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and the regulations found at 40 C.F.R. §270.1(c).

ANSWER: Respondent denies the allegations stated in Paragraph 75.

COUNT 5
STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT BY FAILING TO IMPLEMENT AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS BY FAILING TO MEET THE RECORDKEEPING REQUIREMENTS IN 40 C.F.R. §265.1064

76. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

ANSWER: Respondent repeats and incorporates herein its responses to the allegations stated in Paragraphs 1 through 26 of the Complaint.

77. Pursuant to 40 C.F.R. §265.1064(b) owners and operators must record the following information in an operating record: equipment identification number, approximate location within the installation, type of equipment, percent-by-weight total organics, hazardous waste state at the equipment, and method of compliance with Subpart BB.

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 77 are not consistent with those provisions, said allegations are denied.

78. At the time of the inspection, Respondent had not recorded the required information about pumps, valves, and flanged connections in its operating record.

ANSWER: The allegations stated in Paragraph 78 do not identify the "pumps, valves, and flanged connections" that are the subject of these allegations, and further answering, Respondent denies the allegations of Paragraph 78.

79. Respondent's failure to record information about pumps, valves and flanged connections constitutes a violation of 40 C.F.R. 21265.1064(b).

ANSWER: Respondent denies the allegations stated in Paragraph 79.

80. Respondent did not meet the requirements of 40 C.F.R. Part 265, Subpart BB; therefore Respondent did not satisfy the conditions of 40 C.F.R. §262.34(a)(1)(ii) necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and the regulations found at 40 C.F.R. §270.1(c).

ANSWER: Respondent denies the allegations stated in Paragraph 80.

COUNT 6
STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT BY FAILING TO MEET AIR POLLUTANT EMISSION STANDARDS FOR TANKS BY FAILING TO PERFORM INSPECTIONS OF TANKS AS REQUIRED BY 40 C.F.R. §265.1085(c)(4)

81. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

ANSWER: Respondent repeats and incorporates herein its responses to the allegations stated in Paragraphs 1 through 26 of the Complaint.

82. Pursuant to 40 C.F.R. §265.1085(c)(4), owners and operators shall visually perform an initial inspection of the fixed roof and closure devices on or before the date the tank becomes subject to Subpart CC.

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 82 are not consistent with those provisions, said allegations are denied.

83. Respondent's two 3,000 gallon hazardous waste storage tanks became subject to Subpart CC on or about July 2000.

ANSWER: Respondent denies the allegations stated in Paragraph 83.

84. Respondent could not demonstrate that it had visually performed an initial inspection of the fixed roof and closure devices on the two 3,000 hazardous waste storage tanks prior to July 2000.

ANSWER: The allegations stated in Paragraph 84 do not identify the "fixed roof and closure devices" that are the subject of these allegations, and further answering, Respondent denies the allegations of Paragraph 84.

85. Pursuant to 40 C.F.R. §265.1085(c)(4) owners and operators shall visually perform an inspection of the fixed roof and closure devices at least once each year after the date the tanks are subject to Subpart CC.

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 85 are not consistent with those provisions, said allegations are denied.

86. At the time of the inspection, Respondent could not demonstrate that it had conducted the annual update inspection required by 40 C.F.R. §265.1085(c)(4).

ANSWER: Respondent denies the allegations stated in Paragraph 86.

87. Respondent did not meet the requirements of 40 C.F.R. Part 265, Subpart CC; therefore Respondent did not satisfy the conditions of 40 C.F.R. §262.34(a)(1)(ii) necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. §270.1(c).

ANSWER: Respondent denies the allegations stated in Paragraph 87.

COUNT 7
STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT BY FAILING TO MEET AIR POLLUTANT EMISSION STANDARDS FOR TANKS BY FAILING TO MEET THE RECORDKEEPING REQUIREMENTS IN 40 C.F.R. §265.1090(b)

88. Complainant incorporates paragraphs 1 through 26 of this Complaint as though set forth in this paragraph.

ANSWER: Respondent repeats and incorporates herein its responses to the allegations stated in Paragraphs 1 through 26 of the Complaint.

89. Pursuant to 40 C.F.R. §265.1090(b) owners and operators of a tank using air emission controls in accordance with §265.1085 shall prepare and maintain records for the tank

that include: a tank identification number; a record for each inspection; and prepare and maintain records for each determination for the maximum organic vapor pressure.

ANSWER: The provisions of Title 40 of the Code of Federal Regulations speak for themselves and to the extent that the allegations stated in Paragraph 89 are not consistent with those provisions, said allegations are denied.

90. At the time of the inspection, Respondent could not demonstrate that it had prepared and maintained the required records of the initial inspection required by 40 C.F.R. §265.1085(c)(4).

ANSWER: Respondent denies the allegations stated in Paragraph 90.

91. At the time of the inspection, Respondent could not demonstrate that it had prepared and maintained the required records of the initial inspection required by 40 C.F.R. §265.1085(c)(4).

ANSWER: Respondent denies the allegations stated in Paragraph 91.

92. Respondent's failure to record information gained from conducting the inspections required by 40 C.F.R. §265.1085(c)(4), constitutes a violation of 40 C.F.R. §§265.1085(c)(4) and 265.1090(b).

ANSWER: Respondent denies the allegations stated in Paragraph 92.

93. Respondent did not meet the requirements of 40 C.F.R. Part 265, Subpart CC; therefore Respondent did not satisfy the conditions of 40 C.F.R. §262.34(a)(1)(ii) necessary to exempt it from the requirement to obtain interim status or a permit for the storage (accumulation) of hazardous waste. Respondent stored hazardous waste without a permit or interim status in violation of Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and the regulations found at 40 C.F.R. §270.1(c).

ANSWER: Respondent denies the allegations stated in Paragraph 93.

Sections II through V

The remaining provisions of the Complainant's *Complaint and Compliance Order* are not designated as allegations which relate to the Respondent's obligations or liabilities under the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, *et seq.*, the federal implementing regulations in Title 40 of the *Code of Federal Regulations*, the Ohio Revised Code – Title 37 and the implementing state regulations promulgated in the Ohio Administrative Code. To the extent that Sections II through V of the Complainant's *Complaint and Compliance Order* are deemed to include allegations of liability or justification of a civil penalty or injunctive relief pursuant to the authority of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, *et seq.*; or the Ohio Revised Code, Respondent denies each and every such allegations and disputes the basis for Complainant's justification set forth in Sections II through V.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I the undersigned, hereby certify that I have served on this 30th day of October, 2001, the attached Answer and Request for Hearing by arranging for personal delivery via a reliable commercial delivery service upon the following parties:

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Regional Hearing Clerk (R-19J)
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